IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

Bail Appl..No. 7440 of 2007()

Cr.No.365/2007 OF THE MANJESHWAR POLICE STATION

: PETITIONER/ACCUSED

THARANATH @ ABBA, AGED 32 YEARS,
S/O MANGAPPA, R/AT POYYAKANDAM HOUSE,
BANGARA, MANJASHWER, KASARAGOD.

BY ADV. SRI.T.B.SHAJIMON

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
S.H.O MANJESHWAR POLICE STATION, REP. BY
PUBLIC PROSECUTOR, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 04/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.7440 of 2007

Dated this the 4th day of December, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. He had allegedly kept in his possession 400 packets of Karnataka arrack each containing 100 ml on 16.11.2007. The articles were available in a house allegedly in the possession of the petitioner. The petitioner on seeing the police party allegedly took to his heels and could not be apprehended. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner has nothing to do with the house in question or the contraband articles seized. Merely on a mistaken identity, he is arrayed as the accused. He may be saved of the undeserved trauma of arrest and detention, submits the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. All the available indications point to the complicity of the petitioner. The contemporaneous documents reveal the identity

of the petitioner as also his complicity. There exists no circumstances justifying or warranting the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

4. I find merit in the opposition by the learned Public Prosecutor. This, I am satisfied, is a fit case where the petitioner must appear before the learned Magistrate having jurisdiction or the Investigating Officer and then seek bail in the regular and ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-